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Attorney for Plaintiff,
TROY COVEY,

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TROY COVEY

Plaintiff,

v.

BIOLUMIN INC., d/b/a Biovaj; and
DOES 1 through 10 inclusive,

Defendant.

Case No. 23-cv-1794

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

(1) COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff, Troy Covey alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunction relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*

2. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant conducts business and/or resides within this judicial district, Defendant's acts of infringement complained of herein occurred in this judicial district, and Defendant caused injury to Plaintiff within this judicial district.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and

1 1400(a) in that this is the judicial district in which a substantial part of the acts and
 2 omissions giving rise to the claims occurred. Alternatively, venue is also proper
 3 pursuant to 28 U.S.C. § 1400(b) because the Defendant resides and has a regular and
 4 established place of business in this judicial district.

5 **PARTIES**

6 5. Plaintiff Troy Covey (“Covey”) is an individual and professional
 7 photographer.

8 6. Defendant Biolumin Inc. d/b/a Biovaj (“Defendant”) is a California
 9 corporation with a principal place of business in Newport Beach, California.

10 7. Plaintiff is unaware of the true names and capacities of the Defendants
 11 sued herein as DOES 1 through 10, inclusive, and for that reason, sues such
 12 Defendants under such fictitious names. Plaintiff is informed and believes and on that
 13 basis alleges that such fictitiously named Defendants are responsible in some manner
 14 for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged
 15 were proximately caused by the conduct of said Defendants. Plaintiff will seek to
 16 amend the complaint when the names and capacities of such fictitiously named
 17 Defendants are ascertained. As alleged herein, “Defendant” shall mean all named
 18 Defendants and all fictitiously named Defendants.

19 8. For the purposes of this Complaint, unless otherwise indicated,
 20 “Defendant” includes all agents, employees, officers, members, directors, heirs,
 21 successors, assigns, principals, trustees, sureties, subrogates, representatives and
 22 insurers of the Defendants named in this caption.

23 **FACTUAL ALLEGATIONS**

24 ***Plaintiff Troy Covey Is A Professional Photographer***

25 9. Troy Covey is a successful commercial beauty photographer.

26 10. Covey’s client list includes Lune + Aster, Briogeo, Clinique, Target,
 27 Peloton, Versed Skincare, e.l.f., and *SHAPE Magazine*.

28 11. A portfolio of Covey’s work is available for viewing by general public

1 through his website www.troycovey.com.

2 12. Covey is the sole creator and exclusive rights holder to a beauty
3 photograph of model Alecia Rodriguez (“Rodriguez Image”).

4 13. Attached hereto as Exhibit A is a true and correct copy of the
5 Rodriguez Image.

6 14. Covey has registered the Rodriguez Image with the United States
7 Copyright Office under registration VAu 1-388-463

8 15. Covey is the sole creator and exclusive rights holder to a beauty
9 photograph of model Hailey Elizabeth Rose (“Rose Image”).

10 16. Attached hereto as Exhibit B is a true and correct copy of the Rose
11 Image.

12 17. Covey has registered the Rose Image with the United States Copyright
13 Office under registration number VAu 1-388-466.

14 ***Defendant Biolumin Inc is a commercial business with online marketing***

15 18. According to its website, Biolumin Inc d/b/a Biovaj sells various, all
16 natural skincare products. See www.biovaj.com.

17 19. On information and belief, Defendant operates an Instagram page,
18 @biovaj, that promotes the Defendant’s products (“Defendant’s Instagram”).

19 ***Defendant’s Infringing Conduct***

20 20. On or about June 9, 2020, Covey discovered his Rodriguez Image and
21 Rose Image (collectively, the “Beauty Images”) on Defendant’s Instagram, in posts
22 promoting the Defendant’s products (“Infringing Posts”).

23 21. True and correct screenshots of the Beauty Images being displayed with
24 the Infringing Posts are attached hereto as Exhibit C.

25 22. In the post featuring the Rodriguez Image, Defendant captioned the
26 infringing post with “Shop now 35% Off @Amazon”. See Exhibit C.

27 23. Additionally, Defendant tagged Plaintiff’s personal Instagram,
28 @troycovey, in the Infringing Posts.

1 damages in an amount up to \$150,000.00 if willful or up to \$30,000 if unintentional
2 pursuant to 17 U.S.C. § 504(c).

3 31. Plaintiff is also entitled to injunctive relief to prevent or restrain
4 infringement of her copyright pursuant to 17 U.S.C. § 502.

5
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 8 • For an award of actual damages and disgorgement of all of Defendant's
9 profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount
10 to be proven or, in the alternative, at Plaintiff's election, an award for statutory
11 damages against Defendant in an amount up to \$150,000.00 for each infringement
12 pursuant to 17 U.S.C. § 504(c), whichever is larger;
- 13 • For costs of litigation and reasonable attorney's fees against each Defendant
14 pursuant to 17 U.S.C. § 505;
- 15 • For an injunction preventing each Defendant from further infringement of all
16 copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502;
- 17 • For pre judgment interest as permitted by law; and
- 18 • For any other relief the Court deems just and proper.
- 19

20 Dated: March 9, 23

Respectfully submitted,

21 **/s/ Mathew K. Higbee**
22 Mathew K. Higbee, Esq.
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Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Troy Covey hereby demands a trial by jury in the above matter.

Dated: March 9, 2023

Respectfully submitted,

/s/ Mathew K. Higbee
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